

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 28, 2006, Work Session**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR: X

CLOSED SESSION:

(Confidential)

ACTION: X

INFORMATION:

ITEM TITLE: **Procedure for Filling Vacancies on the Board of Zoning Appeals**

RECOMMENDATION: Adopt a procedure for filling vacancies on the Board of Zoning Appeals as outlined below.

SUMMARY: Section 15.2-2308 of the Code of Virginia (copy attached) requires every locality that has adopted a zoning ordinance to establish a Board of Zoning Appeals (BZA) of either five (5) or seven (7) members. Lynchburg's BZA consists of five (5) members. BZA members serve five year terms and may be reappointed to succeed themselves. Appointments are made by the Judge(s) of the Circuit Court. The Secretary of the BZA, in Lynchburg's case the Zoning Administrator, is required to notify the Court thirty days in advance of the expiration of any term and promptly if a vacancy occurs.

I have met with Judges Mosby and Perrow regarding an appropriate process for filling vacancies on the BZA. They have agreed to the following procedure:

- When the Secretary notifies the Court of the impending expiration of a term, the Secretary will also notify the Court of the incumbent's interest in being reappointed. Unless there have been complaints about the incumbent's performance, the Court will be inclined to reappoint the incumbent.
- In the event that an incumbent wishes to step down or a vacancy occurs, the Clerk of Council will advertise the vacancy in a manner similar to that followed for other positions on boards and commissions.
- City Council will consider the applications and make a recommendation to the Court.
- The Clerk of Council will forward Council's recommendation to the Court along with copies of the applications from all interested individuals.
- The Court will make the appointment as it sees fit.

PRIOR ACTION(S): None

FISCAL IMPACT: None

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): Excerpt from the State Code

REVIEWED BY: lkp

Excerpt from The Code of Virginia, 1950, As Amended

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality.

Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for a city having a population of more than 140,000 but less than 170,000 shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board. The board may make, alter and

rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in any city with a population greater than 390,000, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

(Code 1950, §§ 15-825, 15-850, 15-968.8; 1950, pp. 176, 489; 1952, c. 688; 1962, c. 407, § 15.1-494; 1975, c. 641; 1976, c. 642; 1977, c. 172; 1982, c. 3; 1989, c. 27; 1992, c. 47; 1997, cc. 570, 587; 1998, cc. 346, 520, 528; 1999, c. 838; 2002, cc. 205, 545.)